

(2017) 01 KAR CK 0122
In the Karnataka High Court
Case No : M.F.A. No. 21284 of 2009(MV)

The North West Karnataka State Road Transport	APPELLANT
Vs	
Anusuya Rajashekar Patil	RESPONDENT

Date of Decision : 09-01-2017

Acts Referred:

Motor Vehicles Act, 1988 — Section 168

Citation : (2017) AAC 831

Hon'ble Judges : Mrs. S. Sujatha, J.

Bench : Single Bench

Advocate : Sri. Sunil Desai for Sri. P.P. Hiremath, Advocates, for the Appellant in M.F.A. No. 21284 of 2009(MV); Sri. Santhosh S. Hatti Katagi, Advocate, for the Respondent No. 1 to 3 in M.F.A. No. 21284 of 2009(MV); Served, for the Respondent No. 4 in M.F.A. No. 21284 of 2009(MV); Sri. Santhosh S. Hatti Katagi, Advocate, for the Cross Objector in M.F.A. No. 100166 of 20015; Sri. Sunil Desai for Sri. P.P. Hiremath, Advocates, for the Respondent in M.F.A. No. 100166 of 20015

Final Decision : Dismissed

Judgement

Mrs. S. Sujatha, J.—NWKRTC (corporation) is in appeal whereas the claimant has filed cross objections challenging the judgment and award passed by the Principal Civil Judge (Sr.Dn) and Member, Addl. Motor Accident Claims Tribunal, Belagavi, (Tribunal" for short) in M.V.C. No. 2810/2006.

2. The claimants are the widow and children of deceased Rajashekhar Patil, who died in a road traffic accident, which occurred on 6.9.2006. The claimants filed the petition before the tribunal seeking compensation for the death of the deceased Rajashekhar Patil alleging actionable negligence on the driver of the KSRTC bus bearing No. KA-22/F-956 belonging to the Corporation. On issuance of notice, the Corporation appeared before the tribunal and contested the claim. The tribunal after appreciating the evidence on record, awarded total compensation of Rs. 10,38,000/-, however fixing the contributory negligence to the extent of 15% on the deceased and held that the claimants are entitled for

Rs. 8,82,300/- with interest at 6% p.a. from the date of petition till its deposit before the tribunal. Being aggrieved, the Corporation is assailing the judgment and award on two counts. Firstly the tribunal erred in not appreciating the material evidence on record in much as fixing the contributory negligence only to the extent of 15% on the deceased. The evidence on record clearly established that the accident occurred due to the negligence of the deceased and as such, the entire negligence ought to have been feed on the deceased rider and ought to have absolved the Corporation from the liability of satisfying the award. Secondly, the quantum of compensation awarded by the tribunal is challenged as being exorbitant or excessive.

3. Elaborating the arguments on these two points, the learned counsel invited the attention of the court to the sketch at Ex.P5 to point out that the accident occurred at the centre of the road whereby both the vehicles were moving in the opposite direction. It was contended that the sketch was totally ignored by the tribunal while fixing contributory negligence to the extent of 15% on the deceased. The learned counsel further submitted that the deceased was aged about 51 years at the time of the accident and was working as Senior Technician in Karnataka State Agro Corn Corporation Ltd., Belgaum. The tribunal erred in considering the retirement age of the deceased as 60 years instead of 58 years and applying the split multiplier by considering that the deceased had 9 years of service.

4. On the other hand, learned counsel appearing for the claimants supporting the impugned Judgment and award as far as liability is concerned would contend that the compensation awarded by the tribunal under different heads is meager and contrary to the well established principles of law" enunciated by the Hon"ble Apex Court in catena of judgments. Seeking enhancement of the compensation awarded by the tribunal, learned counsel would contend that the tribunal appreciating the evidence on record fixed the contributory negligence at 15% on the part of the deceased winch cannot be found fault with in terms of the police records available on record.

5. I have given my thoughtful consideration to the arguments advanced by the learned counsel for the parties arid perused the material on record.

6. As regards the fixing the contributory negligence on the deceased, it is apt to refer to Ex.P5, sketch, which clearly indicates the width of the road as 30ft, the bus was moving from north to south and the two wheeler was moving from south to north. Thus, the accident in question is head on collision between the two vehicles. 18 ft was left on the left side of the motorcycle and 16ft was left on the left side of the bus. It is also well settled legal position that the driver of the heavy vehicle is placed in a better position to view the vehicles coming from the opposite direction rather than the smaller motorcycle. The sketch, in tact, discloses the negligence of the driver of the bus was more compared to the negligence of the deceased. These factual aspects are extensively analysed by the tribunal on the basis of the material evidence available on record to fix the

contributory negligence to the extent of 15% on the deceased. Given the circumstances, this court do not find any irregularity or infirmity in the impugned judgment as far as fixing the contributory negligence to the extent of 15% on the deceased and 85% on the driver of the bus. This view is supported by the police records coupled with the evidence of eye witness, PW-2. RW-1 is the self interested witness. Ipse dixit statements of RW-1 cannot instill any confidence to disturb the judgment of the tribunal on this point.

7. As regards quantum of compensation, though appears to be on the lower side under different heads i.e. loss of consortium, compensation towards transportation of dead body, funeral expenses, if the same is reckoned, awarding the compensation in the light of the judgment of the Hon"ble Apex Court in the case of "Rajesh And Others v. Rajbir Singh And Others" reported in 2013 [9] SCC 54, the just and reasonable compensation would be Rs. 1,00,000/- towards loss of consortium; Rs. 10,000/- towards loss of estate; Rs. 25,000/- towards transportation of dead body and funeral expenses; and Rs. 50,000/- towards loss of love and affection. The Hon"ble Apex Court in the case of K.R. Madhusudhan And Others v. Administrative Officer And Another reported in (2011) 4 SCC 689 has categorically held that split multiplier method ought not to have been adopted by the High court while reckoning the loss of dependency. The Division Bench of this Court in the case of M.F.A.No. 101592/2014 c/w 101111/2014 disposed of on 01.02.2016 (Smt. Jarina And Others v. The Principal, KLE Society Belgaum And Another) following the said judgment of K.E. Madhusudan's case (supra) has observed that the split multiplier cannot be adopted in similar nature of cases while computing the loss of dependency. In view of the judgments referred to above, the tribunal was not justified in applying the split multiplier and the same is not fit to be sustained. Considering the age of the deceased as 51 years, the appropriate multiplier ought to have been "11" and applying the same with the monthly income of Rs. 10,000/- as determined by the tribunal, deducting 1/3rd of the income towards the personal and living expenses of the deceased, loss of dependency works to Rs. 8,80,000/- (Rs. 10,000/- x 12 x 11 x 2/3). The total compensation would be almost the same as compensation now awarded by the tribunal even after computing the compensation under different heads as aforesaid. Accordingly, the total compensation awarded by the tribunal is just and reasonable and do not warrant any interference by this court.

8. In the result, the appeal and the cross objections stand dismissed.

9. Amount in deposit shall be transferred to the jurisdictional tribunal for disbursement.